

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-23 are presently pending in the present application. Claims 1-3, 7, 8, 12-14, 16, 17, 19, 22, and 23 have been amended by way of the present Amendment. No new matter is introduced by this amendment.

In the Office Action dated January 8, 2008, the information disclosure statement filed on April 18, 2005, was indicated as failing to comply with 37 CFR §1.98(a)(2); the disclosure was objected to for an informality; claims 1-4, 6-10, 12, 13, 16, 18, and 19 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-8, and 10-13 of copending U.S. App. Ser. No. 10/513,909; claims 1, 4, 6, 7, 10, and 12-14 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-6, 8, and 11 of copending U.S. App. Ser. No. 10/456,922; claims 20-23 were rejected under 35 U.S.C. §101; and claims 1-23 were rejected under 35 U.S.C. §112, second paragraph.

Regarding the objection of the Information Disclosure Statement (IDS) filed on April 18, 2005, it appears that this objection is due to the fact that the two non-patent literature publications that were filed on April 18, 2005, are not present in the Patent Office's computer system. However, the Applicant submits that the IDS filed on April 18, 2005, did comply with 37 CFR §1.98, and that copies of the two non-patent literature publications were submitted therewith. As evidence of the fact that copies of the two non-patent literature publications were submitted with the IDS on April 18, 2005, Applicant is submitting herewith a copy of the date-

stamped filing receipt that shows that the Patent Office received these documents.¹ Accordingly, Applicant respectfully requests the entry and consideration of all of the items listed on the IDS, and acknowledgement of the consideration thereof. As a courtesy, Applicant is submitting herewith copies of the two non-patent literature publications so that the Patent Office records are complete.

Regarding the objection to the disclosure based on the use of the term “qchisq” on page 9 of the specification, the Applicant respectfully traverses this objection. Applicant submits that the term “qchisq” is known to those of ordinary skill in the art to be a shorthand reference to the quantile function of the chi-squared distribution. Thus, Applicant submits that the term is clear. Accordingly, the Applicant respectfully requests the withdrawal of the objection to the disclosure.

Regarding the provisional rejection of claims 1-10, 12, 13, 16, 18 and 19 under the judicially created doctrine of obviousness-type double patenting over claims 1-8, and 10-13 of copending U.S. App. Ser. No. 10/513,909, Applicant has submitted herewith a timely filed terminal disclaimer in compliance with 37 CFR §1.321(c) in order to overcome the obviousness-type double patenting rejection. The present application and U.S. App. Ser. No. 10/513,909 are commonly owned by Rohde & Schwarz GmbH & Co. KG. Accordingly, Applicant respectfully requests the withdrawal of the obviousness-type double patenting rejection based on U.S. App. Ser. No. 10/513,909.

Regarding the provisional rejection of claims 1, 4, 6, 7, 10, and 12-14 under the judicially created doctrine of obviousness-type double patenting over claims 1-8, and 10-13 of copending

¹ At the time of the filing of the IDS, 37 CFR §1.98 (revisions to paragraph (a) of this rule went into effect on October 21, 2004) did not require the submission of copies of U.S. patents listed in the IDS, which is support for the reason that only two references were indicated as being submitted on the date-stamped filing receipt despite the fact that a total of four items were listed on the IDS.

U.S. App. Ser. No. 10/456,922, the Applicant submits that the copending application upon which this rejection is made is incorrectly listed in the Office Action as 10/456,922, but instead is believed to be made based upon U.S. App. Ser. No. 10/465,922. This error appears evident from the fact that U.S. Pub. No. 2004/0057404 is cited in the Form PTO-892 attached to the Office Action, and U.S. Pub. No. 2004/0057404 relates to the 10/465,922 application. Also, this error appears evident from the fact that U.S. App. Ser. No. 10/456,922 does not relate to the technology of the present invention. Accordingly, Applicant has submitted herewith a timely filed terminal disclaimer in compliance with 37 CFR §1.321(c) in order to overcome the obviousness-type double patenting rejection, which is based on U.S. App. Ser. No. 10/465,922. The present application and U.S. App. Ser. No. 10/465,922 are commonly owned by Rohde & Schwarz GmbH & Co. KG. Accordingly, Applicant respectfully requests the withdrawal of this obviousness-type double patenting rejection.

Regarding the rejection of claims 20-23 under 35 U.S.C. §101, the Applicant respectfully requests the withdrawal of the rejections for the reasons discussed below. With respect to claims 20 and 21, Applicant respectfully traverses this rejection by noting that such types of claims are commonly used in U.S. practice to claim a product having a program storing thereon. Applicant notes that MPEP §§2106 and 2106.01 clearly indicate that such claims can be used. Claims 20 and 21 recite functional descriptive material in terms of method steps, and MPEP §2106.01 notes that “[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” Accordingly, the Applicant requests the withdrawal of the rejection of claims 20 and 21. Regarding claims 22 and 23, these claims have been amended to recite language similar

to claims 20 and 21, but being dependent upon claim 7 instead of claim 1. Accordingly, the Applicant requests the withdrawal of the rejection of claims 22 and 23.

Regarding the rejections of claims 1-23 under 35 U.S.C. §112, second paragraph, as being indefinite, the Applicant respectfully requests the withdrawal of these rejections for the reasons set forth below. Regarding the use of the term “small,” claims 1, 2, 7, 8, 12-14, 16, and 17 have been amended to remove this term. In claims 1, 2, 7, 8, 13, 14, 16, and 17, the phrase “small probability” has been changed to “first probability” in order to distinguish it from the other recited probability (e.g., “wrong decision probability”). Regarding the use of the variable “ F_I ” in claim 3, claim 3 has been amended to depend from claim 2, which defines the variable “ F_I .” Regarding the letter “ M ” used in claims 14 and 17, this letter is being used as variable that is defined in these claims as being greater than 1. Thus, claims 14 and 17 have been amended to specify that M is a variable, and therefore are definite. Regarding the rejection of claims 20-23, the Applicant respectfully submits that these claims are not indefinite, since they do not claim both an apparatus and method steps of using the apparatus, but rather these claims recite a product having a program stored thereon, where the program is configured to perform certain steps. Such a claim is not directed to a method of using the product, but rather the claim merely defines certain features in functional terms, in a manner common to such claims in U.S. practice and acceptable under U.S. law as noted in MPEP §2173.05(g). Thus, the Applicant respectfully submits that claims 20-23 are definite. Accordingly, the Applicant respectfully requests the withdrawal of the indefiniteness rejections.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the

undersigned attorney at (703) 519-9957 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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